REMARKS

Claims 12-20 are pending and stand rejected. The prior office actions have acknowledged that Bruwer makes up for elements missing from the Heitschel reference. For simplicity, applicant argues only Bruwer's cited contributions to the rejection of claim 12, the only independent claim.

Claim 12 requires (1) disabling an activation function that switches the receiver to the learning mode, and (2) the disabled activation function preventing the receiver from being switched to the learning mode. Bruwer fails to meet these requirements in two ways. First, Bruwer does not teach disabling the activation function that switches the command receiver to the learning mode. Second, disabling the learning mode of the transmitter in Bruwer does not disable the receiver switching to a learning mode.

I.   Claim 12

A rejection must include a claim construction of a claim element that is consonant with the understanding of the person of ordinary skill and the specification. *See In re Skvorecz*, 92 USPQ2d 1020, 1024 (Fed. Cir. 2009) (PTO's duty to construe claims in making a rejection). Claim 12 requires "disabling at least one activation function that causes the command receiver to switch to the learning mode." Applicant will explain how this limitation can be read in a way that is more consistent with the rest of the claim than the reading used to make the prior rejections.

Claim 12 requires that "the command receiver [is] capable of being switched to a learning mode by at least one activation function." In other words, an activation function causes the command receiver to switch to a learning mode.

A first way to read claim 12 is that "disabling at least one activation function" causes the command receiver to switch to the learning mode. This appears to be the construction used in support of the rejection. The second way to read claim 12 is that the "activation function that causes the command receiver to switch to the learning mode" is disabled. Claim 12 must be read in accordance with the second identified way of reading the claim because the very next element is "preventing the command receiver from being switched into the learning mode by the disabled activation function."

When the activation function is disabled, it is the "disabled activation function." The disabled activation function prevents the command receiver from being switched into the learning mode. However, as explained above, under the first way of reading claim 12, it is the act of "disabling at least one activation function" that causes the act of the command receiver being switched to the learning mode. This is inconsistent with rest of claim 12. Claim 12 would not make sense to require the same function to both switch the command receiver to the learning mode and prevent the command receiver from being switched to the learning mode.

Therefore, the second identified way of reading claim 12 must be proper and controlling. That is, the activation function causes the command receiver to switch to the learning mode, and the "activation function that causes the command receiver to switch to the learning mode" is disabled.

II. Bruwer does not disable an "activation function that causes the command receiver to switch to the learning mode" as required by claim 12.

The Office Action has equated the encoder 10 of Bruwer with the command transmitter of claim 12, and the decoder 12 of Bruwer with the command receiver of claim 12. Bruwer has a receiver (decoder 12) that can be placed in a learning mode by internal or external circuitry, such as a push button 110 or the transmitter (encoder 10) sending a signal to place the receiver in the learning mode. See Bruwer, col. 12, ll. 50-55 and col. 19, ll. 55-59. Because the internal or external circuitry of the receiver (decoder 12) causes the receiver to switch to the learning mode, the internal or external circuitry must be equated to the "activation function that causes the command receiver to switch to the learning mode" of claim 12.

However, nothing in Bruwer teaches, suggests, or discloses disabling the internal or external circuitry of the receiver (decoder 12) as required by claim 12. Accordingly, Bruwer does not teach disabling the "activation function that causes the command receiver to switch to the learning mode."

The Office Action suggests equating the activation function of claim 12 to the learning mode of the transmitter. Even under this interpretation, Bruwer still would not teach the claimed invention. The Office Action's interpretation of claim 12 would

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require that either (1) the learning mode of the transmitter (encoder 10 in Bruwer) or (2) disabling the learning mode of the transmitter (encoder 10 in Bruwer) causes the command receiver to switch to the learning mode. However, nothing in Bruwer teaches, suggests, or discloses (1) the learning mode of the transmitter or (2) disabling the learning mode of the transmitter causing the receiver (decoder in Bruwer) to switch to the learning mode.

III. The disablement in Bruwer does not "prevent the command receiver from being switched into the learning mode" as required by claim 12.

Bruwer does disable something, but that disablement does not prevent the receiver (decoder 12) from switching to a learning mode. Bruwer disables the transmission of the fixed key generation seed 60 from the transmitter (encoder 10). However, that action in Bruwer does not prevent the receiver (decoder 12) from switching to a learning mode.

Bruwer explains that the key generation seed 60 is transmitted only when the transmitter (encoder 10) is in the learning mode. See, Bruwer, col. 9, ll. 42-50. Means 61 can be included in the transmitter (encoder 10) to "permanently disable transmission of the seed 60 after learning has been completed." Bruwer, col. 17, ll. 45-46. However, this action refers to learning by the transmitter (encoder 10) and does not relate to the learning mode of the receiver (decoder 12).

Indeed, Bruwer's goal of disabling the learning mode of the transmitter (encoder 10) is to prevent the transmitter from being paired numerous times. Once the learning mode of the transmitter (encoder 10) has been disabled as in Bruwer, nothing prevents the receiver (decoder 12) from being switched to a learning mode. For example, the switch 110 of the decoder 12 could still be activated to place the decoder 12 in the learning mode.

IV. Conclusion

Applicant has shown that the learning mode of the encoder in Bruwer should not be considered an activation function within the meaning of current claim 12. Applicant has done so by showing that the internal and external circuitry of the decoder in Bruwer

must be equated with the activation function of claim 12. However, Bruwer does not teach disabling the internal and external circuitry of the decoder. Further, the disablement that Bruwer does teach does not prevent the decoder from switching to the learning mode. Therefore, applicant respectfully requests a Notice of Allowance.

Furthermore, applicant respectfully submits that the subject response be entered in case applicant deems an appeal is appropriate and necessary. Should the Examiner be of the opinion that a telephone conference would expedite the prosecution hereof, the Examiner is respectfully requested to call the undersigned at the below-listed number.

The Commissioner is hereby authorized to charge any additional fee which may be required for this application under 37 C.F.R. §§ 1.16-1.18, including but not limited to the issue fee, or credit any overpayment, to Deposit Account No. 23-0920. Should no proper amount be enclosed herewith, such as a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 23-0920.

Respectfully submitted,

Dated: November 23, 2009   By __/amy l. hammer_____
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